IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7144 OF 2004

Sandeep Baburao Naik ...Petitioner

Versus

Madhukar Baburao Mohite & Ors. ...Respondents

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Mr. M.D. Angal, counsel for Petitioner

Mr. S.N. Chandrachud, counsel for Respondent No.1.

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CORAM: B. H. MARLAPALLE, J.

DATED: 18TH MARCH, 2005

P. C.:-

1. Heard Mr Angal, the learned counsel for the petitioner who has filed Regular Civil Suit No. 27 of 2004 and his wife Snehlata has filed Regular Civil Suit No. 29 of 2004 for declaration of title and injunction. In the said suits, they had prayed for permanent injunction from executing the decree passed in Special Civil Suit No. 1222 of 1995. An application for temporary injunction at Exh.5 was also filed and the same was allowed by the III Jt. C.J.J.D. Pune vide his order dated 19.4.2004 by granting temporary injunction in terms of prayer clause (a) which meant that the defendants were restrained by an interim injunction from executing the decree passed in Special Civil Suit No. 1222 of

1995. The defendant therefore, challenged the said order dated 19.4.2004 in Misc. Civil Appeal No. 145 of 2004 and the learned VII Adhoc Additional District Judge at Pune was pleased to allow the same appeal vide his judgment and order dated 2.7.2004 and hence, this petition.

2. There is no dispute that the Special Civil Suit No. 1222 of 1995 was filed U/sec. 6(1) of the Specific Reliefs Act and the same was decreed on 3.5.2003. The present petitioner was the defendant in the said suit and being aggrieved by the said decree, Civil Revision Application No. 451 of 2003 was filed before this Court and it was dismissed on 27.11.2003. Similarly, Civil Revision Application No. 450 of 2003 challenged the very same decree, was also dismissed on the very same day i.e. on 27.11.2003. The plaintiff therein filed Special Darkhast No. 25 of 2004 which is pending before the learned VI Joint Civil Judge, Senior Division at Pune. After dismissal of both the Civil Revision Applications, the petitioner and his mother have filed two separate Regular Civil Suits i.e. R.C.S. Nos 27 and 29 of 2004 against the original plaintiff in Special Civil Suit No. 1222 of 1995 and the relief sought for was declaration for title and injunction. The lower appellate court while restraining the order passed by the trial court below

Exh.5 in Regular Civil Suit No 27 and 29 of 2004, held that the decree passed in Special Civil Suit No. 1222 of 1995 was confirmed by this Court and there was no further challenge to the said decree.

3. In the obtaining circumstances, in a fresh suit filed restraining permanently the execution of the decree, there was no justification to stay the execution proceedings by way of interim injunction by allowing the application at Exh.5. There is no dispute that the present petitioner is not in possession of the suit property as at present and therefore, the lower appellate court was justified in reversing the order passed by the trial court. The impugned order cannot be termed as perverse or manifestly erroneous so as to call for any interference in this petition under Article 227 of the Constitution of India. The reliance placed by the learned counsel for the petitioner on the decision of this Court in the case of **The East India Hotels Ltd. Vs. Syndicate Bank [1997 (1) Bom. C.R. 234]** is misplaced in the facts of this case.

4. The petition is, therefore, rejected summarily.

5. The trial court is directed to hear and decide the Regular Civil Suit Nos. 27 and 29 of 2004 as expeditiously as possible and preferably within a

period of six months from the receipt of writ from this Court.

6. While disposing of the present petition, the undertaking given by the present respondent No.1 that no third party interest will be created till the suits are decided, is noted down.